IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos.21253 to 21256 of 2006
with
SPECIAL CIVIL APPLICATION Nos.23923 to 23940 of 2006
With
SPECIAL CIVIL APPLICATION Nos.23942 to 23950 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KISHORBHAI JHINABHAI PATEL THR'POWER OF ATTORNEY HOLDER - Petitioner
Versus
STATE OF GUJARAT THR' SECRETARY & 2 - Respondents

==========

Appearance :

SPECIAL CIVIL APPLICATION Nos.21253 to 21256 of 2006

MR CJ VIN with MR MB GOHIL for the Petitioner.
Ms KRINA P CALLA, AGP, with MR SS SHAH, GOVERNMENT PLEADER for Respondent : 1,
MR KEYUR D GANDHI WITH MR KS NANAVATI, SENIOR ADVOCATE for NANAVATI ASSOCIATES for Respondents : 2 & 3.

SPECIAL CIVIL APPLICATION Nos.23923 to 23940 of 2006

MR CJ VIN with MR MB GOHIL for the Petitioner.

MS TANUJA N KACHCHHI, AGP, with MR SS SHAH, GOVERNMENT PLEADER for Respondent : 1,
MR KEYUR D GANDHI WITH MR KS NANAVATI, SENIOR ADVOCATE for ANAVATI ASSOCIATES for Respondents : 2 & 3.

SPECIAL CIVIL APPLICATION Nos.23942 to 23950 of 2006

MR CJ VIN with MR MB GOHIL for the Petitioner.
MR KRUNAL D PANDYA, AGP, with MR SS SHAH, GOVERNMENT PLEADER for Respondent : 1,
MR KEYUR D GANDHI WITH MR KS NANAVATI, SENIOR ADVOCATE for ANAVATI ASSOCIATES for Respondents : 2 & 3.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 29/11/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

All these petitions involve consideration of common questions of facts and law and, therefore, this Court proposes to dispose them of by this common judgment. For the sake of convenience, the Court also proposes to refer to the facts of Special Civil Application No. 21253 of 2006.

2. By filing the instant petition, the petitioner has prayed to issue a writ of mandamus, or any other appropriate writ, or order to quash the notice dated March 30, 2005 issued by the Competent Authority under Section 3(1) of the Petroleum and

Minerals Pipelines (Acquisition of Right of User In Land) Act, 1962 ["the Act" for short] calling upon the petitioner to file the objections, if any, to the Notification published in The Gazette of India on February 7, 2005 proposing to lay underground gas pipelines in the land bearing Survey No.46 belonging to him, as according to the petitioner, the said notice has been issued in violation of the provisions of the Act. The petitioner has also prayed to quash the notice dated July 22, 2006 issued by the competent authority to the petitioner informing him that declaration made under Section 6(1) of the Act was published in The Gazette of India on July 2, 2005. The petitioner has further prayed to treat all the consequential proceedings initiated by the respondents for laying the underground gas pipelines in his land pursuant to the above-mentioned notices as illegal, arbitrary and bad in law.

3. The petitioner is a resident of village Bhatia, Taluka : Choryasi, District : Surat. The petitioner owns land bearing Survey No.46 of village Bhatia. The Central Government was satisfied that it

was necessary in the public interest that for the transport of gas from one locality to another locality, pipelines were required to be laid and that for the purpose of laying such pipelines, it was necessary to acquire the right of user in Survey No.46 belonging to the petitioners and in other lands under which the pipelines were to be laid. The Central Government, therefore, issued a notification under Section 3(1) of the Act proposing to acquire the right of user in said land for the purpose of laying underground gas-pipelines, and published it in The Gazette of India on February 12, 2005. A copy of the said notification is produced by the petitioner at Annexure-A to the petition. After publication of the said notification in the Gazette of India, a notice dated March 30, 2005 was served on the petitioner under Section 3(1) of the Act calling upon him to file his objections, if any, within 21 days from the date of service of the said notice, against the notification published in the Gazette on February 12, 2005. A copy of the said notice is produced by the petitioner at Annexure-B to the petition. On receipt of the notice, the petitioner

lodged his objections on April 19, 2005. The petitioner was thereafter called by the Competent Authority for personal hearing on May 6, 2005. The petitioner remained personally present before the competent authority and made submissions. The objection raised by the petitioner were considered by the Competent Authority and disallowed, after which a report as contemplated by Section 6 of the Act was forwarded by the Competent Authority to the Central Government. On scrutiny of the said report, the Central Government was satisfied that it was necessary to acquire the right of user in the land of the petitioner and other lands for the purpose of laying pipelines for the transport of gas and, therefore, the Central Government made a declaration under Section 6 of the Act, which was published in The Gazette of India on July 2, 2005. Thereafter, the respondents served a notice dated July 22, 2006 annexing therewith certain documents and informing the petitioner, inter alia, that the declaration made under Section 6(1) of the Act was published in The Gazette of India on July 2, 2005. A copy of the said notice is produced by the petitioner at Annexure-D to

the petition. The grievance made by the petitioner is that the objections raised by him were not considered by the competent authority and, therefore, the notices issued to the petitioners are liable to be set aside. According to the petitioner, the principles of natural justice and fair play require that the competent authority should have communicated the order disallowing the objections raised by the petitioner, and as the said order was not communicated to the petitioner, the proceedings initiated for laying the underground gas-pipelines in his land are liable to be set aside. What is claimed by the petitioner is that the declaration under Section 6(1) of the Act was not published in The Gazette of India within the period of one year from the date of publication of the notification issued under Section 3(1) of the Act and, therefore, the prayers made in the petition should be granted. The petitioner has averred that the gas-pipelines proposed to be laid in his land pass almost at the center of the field, which would render the remaining part of his land useless and as other alternative place is available for laying the pipelines, the

action of the respondents in laying the underground gas-pipelines in his land, should be regarded as illegal. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs to which reference is made earlier.

4. On service of notice, Mr.Amulakh Kasturchand Sanghvi, who is appointed as competent authority by the Government of India to perform the functions of competent authority under the provisions of the Act, has filed reply-affidavit controverting the averments made in the petition. In the reply, it is stated that the notification under Section 3(1) of the Act declaring the intention to acquire right of user in the land of the petitioner and in other lands was published in The Gazette of India on February 7, 2005 for laying the pipelines for transportation of natural gas through an inter-connection between Jamnagar-Bhopal and Kakinada-Hyderabad-Goa Pipeline by Reliance Gas Transportation Infrastructure Limited, the total length of which is 1506.76 Kms. It is mentioned in the reply that the pipeline is passing through 701 villages, as a result of which,

the aforesaid acquisition of the right of user in the land of the petitioner for the purpose of laying the pipelines should not be regarded as illegal. In the reply, it is mentioned that the notice under Section 3(1) of the Act read with Rules 3 & 8 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963 was served upon the petitioner calling upon him to file his objections, if any, to the proposed laying of underground gas pipelines in his land. What is mentioned in the reply is that the substance of the notification issued under Section 3(1) of the Act was also published by beat of drums in the neighbourhood of the lands in question and was also affixed at the Revenue Offices of Collector/Prant/Mamlatdar and District/Taluka and Gram Panchayat Offices. It is further mentioned in the reply that the objections raised by the petitioner were considered and disallowed. What is asserted in the reply is that having regard to the object and scheme of the Act, it is not open to the petitioner to challenge the decision rendered by the competent authority after considering his objections and, therefore, challenge

to the notices issued to the petitioner is misconceived. It is pointed out in the reply that the declaration under Section 6 of the Act was published in The Gazette of India on June 27, 2005 i.e. within one year from the date of publication of the Notification issued under Section 3 of the Act in the Gazette on February 12, 2007 and, therefore, the plea that the declaration under Section 6 was not made within one year from the date of publication of Notification under Section 3(1) of the Act, has no factual basis. What is claimed in the reply is that after giving the opportunity of being heard to the petitioner, appropriate decision was taken, pursuant to which, the declaration under Section 6 was made and published and, therefore, the petitioner is not entitled to the reliefs claimed in the petition.

It may be mentioned that the petitioner has not filed affidavit-in-rejoinder controverting the factual statements made by Mr.Sanghvi in his reply-affidavit.

5. This Court has heard Mr.C.J.Vin, learned

Counsel with Mr.M.B.Gohil, learned Advocate for the petitioner, and Mr.S.S.Shah, learned Government Pleader for the respondent No.1 as well as Mr.K.S.Nanavati, learned Senior Advocate for the respondents No.2 & 3, at length and in great detail. This Court has also considered the documents forming part of the petition.

6. The contention that the petitioner was not given a copy of the order disallowing the objections raised by him pursuant to receipt of the notice issued under Section 3(1) of the Act and, therefore, the reliefs claimed in the petition should be granted, is devoid of merits. It may be mentioned that the Act has been enacted to provide for acquisition of right of user in land for laying pipelines for transport of petroleum and minerals. Anticipating substantial increase in the production of crude oil, natural gas and petroleum products by the Public Sector Oil Fields and Refineries in India, the Government had felt it necessary to lay petroleum pipeline to serve as an efficient and cheap means of transportation as well as distribution of petroleum

and petroleum products. The Act was enacted to enable the authorities to lay pipelines for transportation of petroleum and minerals. The main feature of the Act is that even after final declaration about acquisition for user of the land is made, the owner or occupier of the land is entitled to use the land for the purpose for which such land was put to use immediately before the declaration is made subject to the restrictions mentioned in Section 9 of the Act, and compensation for the damage, loss or injury suffered is also payable to the person interested in the land. Section 5 of the Act deals with hearing of objections and reads as under :-

> "**5.Hearing of objections**: (1) Any person interested in the land may, within twenty-one days from the date of the notification under sub-section (1) of Section 3, object to the laying of the pipeline under the land.
>
> (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.
>
> (3) Any order made by the competent authority

under sub-section (2) shall be final."

A bare perusal of Section 5 of the Act, which is quoted above, makes it evident that it is almost pari materia with Section 5-A(1) and Part of Section 5A(2) of the Land Acquisition Act, 1894.

In **Sipai Mamdoobhai Dadabhai v. State of Gujarat & Ors., 26(1) GLR 746**, one of the questions considered was, whether a copy of the report under Section 5A of the Land Acquisition Act, 1894 should be given to the objector. After examining the scheme of the Land Acquisition Act, 1894, the Division Bench has held as under :

> "It is submitted that petitioners were not supplied with copy of the report submitted to the Government and, therefore, the declaration made under Section 6 of the Act and further acquisition proceedings are bad. In this connection, reference may be made to a decision of the Supreme Court in the case of Abdul Hussain Tayabali v. State of Gujarat, AIR 1968 SC 432. In para 16 of the reported decision it is inter alia observed that the report has merely recommendatory value and is not binding on the Government. The Collector has to send the report together with the record and it is for the Government to arrive at its satisfaction independently. The report and the record are sent to the Government to enable the Government to form its satisfaction that the acquisition is

> necessary for the public purpose. It is thereafter that Section 6 declaration as required under Section 6 is issued. The Hon'ble Supreme Court has further held that neither Section 5-A nor any other provision of the Act lays down that a second opportunity has to be given before the issuance of Section 6 notification. In view of this position of law laid down by the Supreme Court, supply of copy of the report to the objector will be of no use whatsoever."

Applying the principles laid down by the Division Bench of this Court in the above-quoted decision to the facts of the present case, this Court is of the opinion that the petitioner was not entitled to receive a copy of the report forwarded by the competent authority to the Government after considering the objections, which were filed by the petitioner. The contention that in view of the provisions of Rule 8 of the Rules, it was incumbent upon the Competent Authority to supply a copy of the report which was forwarded by him to the Central Government, has no substance. Rule-8 deals with mode of service of notice etc. It, inter alia, provides that any notice or letter issued or any order passed, may be served by delivering or tendering a copy of such notice, letter or order, as the case may be, to

the person for whom it is intended, or to any adult member of his family or by sending it by registered post acknowledgment due addressed to that person at his usual or last known place of residence or business. It does not provide that a copy of the report to be forwarded by the Competent Authority to the Central Government should be supplied to the objector. The mode of service of notice or order as contemplated by Rule 8 would come into play only if the order passed under the Act is required to be served to the person for whom it is intended and not otherwise. Therefore, Rule 8 cannot be construed to mean that a copy of the report to be forwarded by the Competent Authority to the Central Government is required to be supplied to the objector. Therefore, the petitioner is not entitled to the reliefs claimed in the petition on the ground that copy of the report of the Competent Authority was not supplied to him.

7. The contention that other suitable land was available and, therefore, the decision to lay the pipeline in the land of the petitioner should not have been taken, is merely stated to be rejected. It

is well-settled that the High Court, while exercising powers under Article 226 of the Constitution, would not embark upon an inquiry as to whether selection of the land of the petitioner by the competent authority for the purpose of laying the gas pipelines is proper or not. The petitioner has not specifically alleged personal malafide against any of the officers of the appropriate Government. It may be mentioned that initially it was proposed by the Central Government to lay the underground gas-pipeline through the field of the petitioner. Thereafter the petitioner was served with notice under Section 3(1) calling upon him to file objections, if any, to the proposed action within 21 days from the date of receipt of the notice. The record further shows that on the receipt of the notice, the petitioner had filed objections and as is evident from the record of the case, one of the objections which was raised by the petitioner, was that alternative site was available for the purpose of laying the underground gas-pipelines. This objection and others which were raised by the petitioner, were considered and disallowed by the competent authority. Thereafter the record had

reached before the appropriate Government and the appropriate Government, after looking into the report and the record, had made the declaration under Section 6 of the Act. Thus, after application of mind to the facts of the case, it was decided by the authorities to lay the underground gas-pipelines in the land of the petitioner. The said decision, therefore, cannot be regarded as arbitrary or capricious so as to warrant interference of this Court in the instant petition filed under Article 226 of the Constitution more particularly when, while exercising powers under Article 226 of the Constitution, the High Court does not sit in appeal over such decisions.

8. Apart from the fact that this Court does not find any merit in the petition, it is noticed that the petition suffers from certain inherent defects which go to the root of the matter. It is relevant to notice that no prayer is made to set aside either the preliminary notification declaring the intention to acquire right of user in the land of the petitioner for laying gas-pipelines, or the declaration made

under Section 6 of the Act, but, what is prayed by the petitioner is to set aside the two notices issued to him. Therefore, even if the notices are quashed, this Court is of the opinion that the preliminary notification published under Section 3 of the Act as well as the declaration made under Section 6 of the Act, would remain intact, since there is no prayer to quash or set aside the same and would operate as a bar to the grant of the reliefs claimed in the petition. Even if it is assumed for the sake of argument that those notifications were intended to be challenged in the petition, this Court finds that the preliminary notification declaring the intention to acquire the right of user in the land of the petitioner for the purpose of laying the gas-pipelines, was issued by the Central Government. So also, the final declaration under Section 6 of the Act was also made by the Central Government. However, the Central Government is not impleaded as a party-respondent to the petition, but, the petitioner has impleaded the State Government as respondent No.1, which has nothing to do either with the preliminary notification or the final notification. Thus, this

Court finds that the petition is also liable to be dismissed on the ground of non-joinder of necessary party.

9. What is relevant to notice is that the scheme of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 is such that immediately on publication of declaration under Section 6(1) of the Act, the right of user in the land vests absolutely with the Government, which is unlike in the land acquisition proceedings under the Land Acquisition Act, 1894, where taking over possession and vesting of right, except in cases of emergency, only follows after passing of the award. While interpreting the provisions of the Land Acquisition Act, 1894, the Supreme Court in (1) Municipal Corporation of Greater Bombay v. Industrial Development Investment Co.Pvt.Ltd. and Ors., (1996)11 SCC 501, and (2) H.M.Kelogirao and ors. v. Govt. of A.P. and Ors. (1997)7 SCC 722, has ruled that once the land is vested in the Government absolutely free from all encumbrances, it is not open for the High Court to interfere with the acquisition proceedings

under Article 226 of the Constitution. The same principle will have to be made applicable to the provisions of the Act, which is under consideration of the Court. It is not in dispute that in view of the notification under Section 6(1) of the Act of 1962 published in the Gazette of India on July 2, 2005 read with the order passed by the Central Government, the right of user in land in question for laying gas-pipelines has been vested in the respondent No.3-Corporation as contemplated by Section 6(4) of the Act. The record shows that not only the petitioner had lodged his objections, but, he was personally heard by the Competent Authority regarding the objections raised by him, after which a report as contemplated by Section 6 of the Act was forwarded by the Competent Authority to the Central Government. Therefore, this Court is of the opinion that the final declaration published under Section 6 of the Act cannot be interfered with by this Court while exercising powers under Article 226 of the Constitution. Therefore, the petition is also liable to be dismissed on this ground.

10. The two points mentioned earlier were the only points urged by the learned Counsel for the petitioner for consideration of the Court, and no other point was urged in support of the petition. As this Court does not find any substance in any of the two points urged at the Bar, the petition, which lacks merits, deserves dismissal.

For the foregoing reasons, the petition fails and is dismissed. The notice is discharged. There shall be no order as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(Patel)